



The Internet & Television Association  
25 Massachusetts Avenue, NW | Suite 100  
Washington, DC 20001  
(202) 222-2300

**Diane Burstein**  
Vice President &  
Deputy General Counsel  
o (202) 222-2449 e dburstein@ncta.com

February 14, 2019

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: In the Matter of Leased Commercial Access; Modernization of Media  
Regulation Initiative: MB Docket Nos. 07-42; No. 17-105**

Dear Ms. Dortch:

On February 12, 2019, Rick Chessen (NCTA—The Internet & Television Association), Jordan Goldstein (Comcast Corporation), Maureen O’Connell (Charter Communications), Steve Horvitz (Davis, Wright, Tremaine) and I met with the following Media Bureau staff: Michelle Carey, Nancy Murphy, Holly Saurer, Martha Heller, Steve Broeckert, Katie Costello, Diana Sokolow, and Olivia Avery. We discussed NCTA’s written submissions in the above-captioned proceeding.

We explained that commercial leased access is an anachronism and, for the reasons stated in the written comments of NCTA<sup>1</sup> and Charter,<sup>2</sup> likely could not survive a First Amendment challenge. Unlike when Congress adopted commercial leased access requirements in 1984, video programmers today have many alternative routes to the consumer. In addition to other multichannel video programming distributors, video programmers can easily access viewers through a variety of online platforms.<sup>3</sup>

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<sup>1</sup> Comments of NCTA—The Internet & Television Association at 11-15 (filed July 30, 2018) (“NCTA Comments”).

<sup>2</sup> Reply Comments of Charter Communications, Inc. at 3-8 (filed Aug. 13, 2018).

<sup>3</sup> NCTA Comments at 8-10.

For example, YouTube, which has over a billion monthly active users,<sup>4</sup> provides any user the opportunity to create their own financially-viable content channel.<sup>5</sup> All that is needed is a Google account to create a “YouTube Channel” to upload videos. Similarly, individuals can use the *Facebook Live* feature on their Facebook profile and stream live videos from their cellphones and computers. Facebook, which also has more than a billion users, provides step-by-step instructions on how to use the Facebook Live Video Broadcast feature on its website.<sup>6</sup> Instagram has a similar feature that allows users to create a free profile and post “livestream” videos. Given the existing and emerging opportunities for video content providers, there can be no dispute that commercial leased access is not necessary for diverse video programmers to reach viewers.

We also discussed the significant – and outsized -- burdens that part-time leased access imposes on cable systems. Part-time leased access channels differ significantly from other full-time broadcast and non-broadcast linear channels that cable operators provide. Leased access programmers often need assistance from the field that other, traditional programmers do not require. These technical and administrative needs are multiplied many times over, since Commission rules mandate that operators lease time in increments as small as a half hour. Among other things, cable operators must enter into negotiations and sign agreements with each user; coordinate engineering and production teams for the delivery and ingest of content; provide ongoing technical and production support; and engage in billing and (all too often) collection services. In some cases, these tasks necessitate dedicating personnel in the field simply to assist with leased access programmers. Collectively, the cable industry spends millions of dollars annually simply servicing the needs of leased access users.<sup>7</sup> We noted that part-time leased access is not statutorily required.

Finally, we explained that the current leased access formula fails to adequately compensate cable operators for use of their valuable channel capacity.<sup>8</sup> We identified issues with the existing “average implicit fee” formula and proposed that cable operators that carry leased access programming on the basic tier should be able to calculate the

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<sup>4</sup> Alphabet, Annual Report (Form 10-K) (Feb. 4, 2019).

<sup>5</sup> YouTube, Help Center - Create a New Channel (last visited Feb. 12, 2019), <https://support.google.com/youtube/answer/1646861>. See also <https://www.forbes.com/sites/natalierobehmed/2018/12/03/highest-paid-youtube-stars-2018-markiplier-jake-paul-pewdiepie-and-more/#18ea1b6909ac>

<sup>6</sup> Facebook, *Publish Live Broadcasting* (last visited Feb. 12, 2019) <https://www.facebook.com/help/publisher/167417030499767>.

<sup>7</sup> Many more unreimbursed costs are incurred in providing leased access information to entities that ultimately choose not to lease time. For this reason, we urged the Commission to permit operators to charge an application processing fee. See NCTA Comments at 17-19.

<sup>8</sup> See, e.g., <http://www.leasedaccess.org/> (“A Prime Time (6pm/12am) may be a few hundred dollars on a site with thousands of subscribers but only \$25 or less on one with only a few thousand”.); <http://www.leasedaccessinfo.com/> (“Perhaps the biggest reason to consider leased access is low cost-you can buy time for an entire 1/2 Hour Program for usually less than the price of a :30 second spot!”)

average implicit fee based on a basic tier-specific calculation, rather than based on the blended calculation required under the existing formula. In particular, we explained that the economic factors used in the average implicit fee calculation vary by tier, and it would be much simpler to calculate the leased access rate for basic tier placement on a tier-specific basis, rather than on a blended tier basis.

Respectfully Submitted,

**/s/ Diane B. Burstein**

Diane B. Burstein

cc: Diana Sokolow  
Michelle Carey  
Nancy Murphy  
Holly Saurer  
Martha Heller  
Steve Broeckaert  
Katie Costello  
Olivia Avery